

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * * * *

PHILLIP B. ASHDOWN,)	
)	
Plaintiff,)	3:11-cv-00832-LRH-WGC
)	
v.)	
)	<u>ORDER</u>
PRISON HEALTH SERVICES, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

Before this Court is the Report and Recommendation of U.S. Magistrate Judge William G. Cobb (#108¹) entered on September 18, 2012, recommending granting Defendants' Partial Motion to Dismiss (#48) filed on April 16, 2012, and granting Defendants' Motion to Strike (#82) filed on July 2, 2012. Plaintiff filed his Objection to Magistrate Judge's Report and Recommendation (#128) on November 28, 2012. Defendants have not filed a response. This action was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4 of the Local Rules of Practice of the United States District Court for the District of Nevada.

The Court has conducted its *de novo* review in this case, has fully considered the objections of the Plaintiff, the pleadings and memoranda of the parties and other relevant matters of record pursuant to 28 U.S.C. § 636 (b) (1) and Local Rule IB 3-2. The Court determines that the Magistrate Judge's

¹Refers to court's docket number.

1 Report and Recommendation (#108) entered on September 18, 2012, should be adopted and accepted.

2 IT IS THEREFORE ORDERED that the Magistrate Judge's Report and Recommendation
3 (#108) entered on September 18, 2012, is adopted and accepted, and Defendant's Motion to Strike
4 (#82) is GRANTED. The Clerk of the Court shall STRIKE Plaintiff's Opposition (#80).

5 IT IS FURTHER ORDERED that Defendants' Partial Motion to Dismiss (#48) is GRANTED
6 as follows:

7 (1) Defendants' Eighth Amendment claims that NDOC medical providers and officials were
8 deliberately indifferent to his need for prescription medication refills, dentures, bowels, and
9 injuries following a fall on October 16, 2010 is **DISMISSED without prejudice**;

10 (2) Plaintiff's retaliation claim is **DISMISSED without prejudice**;

11 (3) The Nevada Department of Corrections is **DISMISSED with prejudice**; and

12 (4) Plaintiff's state law claim for medical malpractice is **DISMISSED without leave to**
13 **amend**.

14 IT IS FURTHER ORDERED that Plaintiff's Motion to Extend Time (Second Request) is
15 GRANTED *nunc pro tunc*.

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17 IT IS SO ORDERED.

18 DATED this 20th day of February, 2013.



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20 LARRY R. HICKS
21 UNITED STATES DISTRICT JUDGE
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